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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

AMENDMENT OF PARTS 2 AND 90 OF THE)
COMMISSION'S RULES TO PROVIDE FOR THE)
USE OF 200 CHANNELS OUTSIDE THE)
DESIGNATED FILING AREAS IN THE)
896-901 MHZ AND THE 935-940 MHZ BANDS)
ALLOTTED TO THE SPECIALIZED MOBILE)
RADIO POOL)

IMPLEMENTATION OF SECTION 309(J))
OF THE COMMUNICATIONS ACT -)
COMPETITIVE BIDDING)

IMPLEMENTATION OF SECTIONS 3(N) AND 322)
OF THE COMMUNICATIONS ACT)

To: The Commission

COMMENTS

Pro Tec Mobile Communications, Inc. (Pro Tec), by its attorneys, respectfully submits its Comments to the Commission's Second Further Notice of Proposed Rule Making in the above-captioned matter. In support of its position, Pro Tec shows the following:

Pro Tec Mobile Communications, Inc. is an Arizona corporation which has a female president-majority shareholder, Catherine Sutter. Ms. Sutter has over fifteen years experience in the land mobile radio business, including sales, service, system design, site development, and all other phases of the land mobile radio industry. The company currently is the licensee/operator of 900 MHz trunked facilities in the Phoenix

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market, which serve hundreds of users. The company's success is a direct result of Ms. Sutter ceaseless effort and vision in developing the 900 MHz spectrum to provide dispatch services to a wide array of businesses, local governments and public safety entities throughout the region. Based on its own market data, Pro Tec boasts the greatest 900 MHz channel loading in the entire Phoenix market and its efforts demonstrate that it will continue to enjoy substantial success in its market.

Ms. Sutter has been recognized for her accomplishments, including her designation as the Number One Kenwood dealer in the State of Arizona in 1994 and her recent appointment to the 900 MHz Council of American Mobile Telecommunications Association (AMTA). Her company includes retail sales of radio products, reselling cellular service, operation of 800 MHz trunked facilities, operation and leasing of tower sites at key locations within the market, and participation in matters before the Commission that have an impact on the operations of independent entrepreneurs.

Ms. Sutter and Pro Tec Mobile Communications, Inc. are well qualified to speak to those issues within this proceeding that might benefit or hamper the development of radio facilities by small businesses and minority/female owned businesses. The Commission's request for comments from such entities, including a description of such entities' participation in the marketplace, is hereby heeded by Ms. Sutter and Pro Tec in an effort to assist and guide the Commission in meeting the urging of Congress to provide for greater participation and growth of small/minority owned businesses.

Accordingly, Ms. Sutter respectfully provides her comments to the Commission's Notice of Proposed Rule Making.

Incumbent Designated Entities

As stated above, Pro Tec is a licensee of 900 MHz spectrum. The protected service contour of its system provides coverage to over one-fourth of the entire population of the Phoenix MTA. Therefore, in accord with the Commission's proposed coverage criteria for auction winners, Pro Tec's existing system is well on its way to meeting the criteria for the first, three-year benchmark. Although Pro Tec has not performed a study to determine whether its existing system provides service to one-third of the population of the Phoenix MTA, it is Pro Tec's belief that such is the case. The remainder of the population within the MTA is spread over thousands of square miles of sparsely populated geography.

Given the Commission's proposed protection of incumbent licensee's systems, the logical question which arises is whether Pro Tec should be made to participate in an auction to serve the remaining portions of the MTA, given Pro Tec's existing primacy in the market.¹ Obviously, the provision of service to the remainder of the MTA on the subject channels would be justified only if the wide-area licensee were able to

¹ In recent testimony to Congress, Chairman Hundt stated that broadcasters should not be required to participate in auctions for spectrum to be employed to deliver HDTV due to (paraphrasing), "the fact that broadcasters, through their forty years of service to the public interest have already earned the spectrum." Pro Tec respectfully requests that a similar consideration be afforded designated entities in this proceeding.

concurrently serve the Phoenix market. In fact, there exists grave doubt as to whether the Commission may conclude that an auction winner for use of Pro Tec's channels for operation of a wide-area system throughout the remainder of the MTA can be relied upon to finance construction of the system, when the winner could not guarantee the receipt of service within the Phoenix market.

The Commission Should Waive the Auction Requirement

To assist the Commission in encouraging the participation in the market by small businesses, women and minorities, Pro Tec suggests that wide-area licenses be awarded to existing, designated entity licensees without the requirement of auction participation if the following criteria exist:

- (1) The entity must be a small or women or minority-owned business as defined in the Commission's Notice of Proposed Rule Making.
- (2) The entity must have a fully constructed and operational 900 MHz system, operating on at least ten channels.
- (3) The existing system, employing a 55-mile service contour, must presently provide coverage to 25% or more of the population within the MTA.

Pro Tec respectfully suggests that the Commission award wide-area licenses on those frequencies presently employed by entities which can demonstrate eligibility based on the aforementioned three criteria. The public interest would not be served by demanding that those same licensees further demonstrate their interest in participating in

the operation of 900 MHz land mobile service by auction payments which would be better used to finance construction of a wide-area system throughout the MTA.

In the alternative, Pro Tec suggests that the Commission provide more substantial bidding credits of, at least, 40%, to entities which can demonstrate eligibility via the above recommended criteria. Such increased bidding credits would encourage greater participation in the auction process by entities which have already demonstrated their willingness to assist in the diversification of participation by small business, women and minorities.

One final alternative would be to set aside those channels as restricted to bidding among only designated entities. That is, only designated entities would be eligible to bid on channels which are presently occupied by designated entities who operate a ten-channel trunked system within an MTA. By mandating this restriction, the Commission would not erase the progress made and presently enjoyed by designated entities to date.

Pro Tec's above suggestions are intended to provide encouragement and support of existing designated entity/licensees in the marketplace who should be allowed the unfettered opportunity to expand and grow their systems throughout an MTA and whose scarce resources should not be diluted through a bidding war with large, well financed, public traded corporations.

Women in the SMR Industry

Pro Tec welcomes the Commission's invitation to female members of the industry to comment in this proceeding, particularly those women who have worked hard to develop 900 MHz systems to serve the market. The Commission's invitation demonstrates a willingness to work with such entities to encourage greater participation by females in what is a traditionally male-dominated marketplace. Pro Tec notes that women are making substantial strides in the marketplace, however, such progress can be unintentionally erased by precipitous actions which exacerbate women's historical disadvantages. Pro Tec wishes to commend the Commission's efforts and requests greater assurance that the past efforts of Pro Tec are recognized and awarded by greater opportunity and potential for growth.

It has not escaped Pro Tec's notice and Pro Tec reasonably expects that the Commission is aware that the effect of the Commission's earlier assistance to entities in providing additional construction time periods has provided to the largest entities an advantage over local operators. It has also caused some degree of spectrum warehousing, whereby channels have laid fallow in the marketplace for an extended period.

Given the present industry environment, there exists greater incentives for larger entities to engage in speculation regarding the use of 900 MHz channels in the future. Designated entities are not positioned to engage in the same activity or business strategy

due to the inability to transfer their ownership to publicly traded corporations during the first five years. Accordingly, designated entities must employ a business strategy which is based on service and revenue production from operation of the wide-area system, rather than a strategy of capitalization, financing, stock sales and the like.²

The Commission is, therefore, justified in providing opportunity and incentive to designated entities who will earn all such consideration in the future by and through their natural tendency to construct and operate their system to produce the necessary financing and revenues which is not available from other sources.

The Effect of the Commission's Bidding Standard on Designated Entities

At paragraphs 79 and 80 of the NPRM the Commission proposed that bidding at auction be subject to increases by either five percent over the previous bid or X cents per MHz per pop., whichever is higher. Although Pro Tec appreciates the Commission's concerns regarding limiting the duration of the auction, Pro Tec respectfully suggests that the Commission's system might work a hardship on designated entities.

Although Pro Tec supports the Commission's proposal regarding subsequent increasing bids being at least 5% higher than the previous bid, the Commission's use of

² At paragraph 136 of its FNPRM, the Commission suggests that designated entities will suffer greater capitalization problems in constructing and operating PCS systems versus 900 MHz wide-area systems. Obviously, sheer cost estimates would bear out this suggestion. However, the need to accommodate designated entities is no less whether the capitalization hardship is painful or nearly impossible.

an arbitrary value per pop. might cause untenable jumps in bidding prices for designated entities. As stated supra., there are circumstances where the existing licensee on the channels is a designated entity seeking the opportunity to expand its system. However, the revenue stream which can be expected to be forthcoming from future construction throughout the more sparsely populated areas of the MTA does not justify the Commission's proposed per pop standard. The reasons for this conclusion are obvious.

As in Pro Tec's situation, a large portion of the population is already receiving service from Pro Tec's existing system. The right to serve the widely-spaced, remainder of the population is not reflected in a per/pop analysis. The reason being that the value of sparsely populated areas and a widely distributed population base is not equal to the per pop. value of an urban, densely populated market. Accordingly, the Commission standards do not appear economically supportable for those situations.

Pro Tec assumes that the Commission's proposed standard arises out of its experience with auctions for spectrum which does not have existing licensees subject to protection or consideration. Accordingly, the per. pop standard is an average value for the population over the entire MTA. However, this proceeding involves the protection of existing systems which, by their authority, might preclude winners from ever providing service in the most valuable areas of the MTA. Therefore, the Commission's assumed value based on a MHz per pop. analysis is not reflective of the environment.

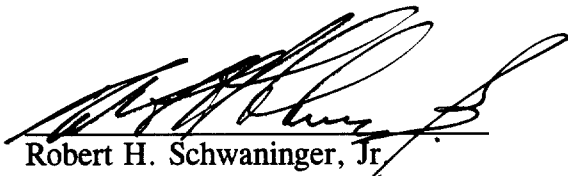
To avoid prolonged discussions and comments regarding what spectrum is worth in one market versus another, the Commission should simply reject the per pop. standard for acceptable bidding and simply employ the proposed five percent criterion. The five percent criterion will accomplish the Commission's goals without creating valuation complexity to be suffered by potential bidders.

Conclusion

Pro Tec Mobile Communications, Inc. respectfully requests that the Commission modify its adoption of the proposals contained in its Second Further Notice of Proposed Rule Making in view of the Comments contained herein.

Respectfully submitted,
PRO TEC MOBILE COMMUNICATIONS, INC.

By


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Dated: May 24, 1995

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